

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Communications Assistance for
Law Enforcement Act

CC Docket No. 97-213

REPLY COMMENTS
OF ICO SERVICES LIMITED

ICO Services Limited ("ICO")¹ submits the following reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking² addressing the implementation of the Communications Assistance for Law Enforcement Act ("CALEA").³

I. INTRODUCTION

ICO supports the Commission's efforts to implement CALEA and acknowledges the legitimate electronic surveillance needs of law enforcement.⁴ ICO agrees with the

¹ ICO Services Limited is a company established under the laws of England and Wales, and is a wholly owned subsidiary of ICO Global Communications (Holdings) Limited ("ICO Global"), the ultimate parent of a wholly owned group of companies which is developing a satellite system for the provision of global mobile satellite services ("MSS"). ICO is developing and will launch and operate a United Kingdom authorized global MSS system that will consist of 12 in orbit satellites operating on a non-common carrier basis.

² See *Communications Assistance for Law Enforcement Act*, Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC No. 97-356 (Oct. 10, 1997) ("CALEA NPRM").

³ Communications Assistance For Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) ("CALEA").

⁴ ICO agrees with those commenters, however, who argue that the definition of "Telecommunications Carrier" under CALEA must be interpreted to include only common carriers. See e.g., Comments of Globecast North America Inc. at 1; Comments of Motorola

(Footnote continues on following page.)

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overwhelming majority of commenters, however, that the continued delay in establishing permanent technical requirements and standards for CALEA compliance requires that the Commission exercise its broad authority under CALEA to extend the rapidly approaching October 1, 1998 carrier compliance deadline. The situation is particularly acute for MSS system providers whose fixed construction schedules will not permit modification to the satellite systems, at least until well into their operational phase. ICO, for example, cannot commit to meeting any new CALEA requirements earlier than two years beyond the release by the industry of MSS technical standards that comply with capacity standards established by the Federal Bureau of Investigation ("FBI"), or two years beyond its initial operation capability ("IOC"), currently planned for the third quarter of the year 2000, whichever is later.

The Commission specifically must address the unique problems faced by MSS providers in implementing CALEA, and avoid adopting overly broad standards that MSS operators cannot meet. In addition, the Commission must ensure that any industry standards do not violate the provisions of CALEA. Of specific concern to ICO is the 125 meter automatic location information ("ALI") requirement set forth in the interim CALEA technical standard adopted by the terrestrial telecommunications industry in December

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Inc. at 2 ("Motorola Comments"). ICO will not operate as a common carrier and, therefore, is not subject to CALEA. The comments below are offered in the event that the Commission determines that non-common carrier MSS providers are subject to CALEA requirements, and in no way should be read to concede that ICO-related U.S. operations are subject to CALEA.

1997.⁵ ICO requests that the Commission find that such an ALI standard would violate CALEA and must be deleted from industry standards.⁶

II. MSS INDUSTRY COMPLIANCE WITH CALEA DEADLINE IS IMPOSSIBLE

Commenters almost universally agreed that compliance with the CALEA technical standards by the October 24, 1998 deadline is not "reasonably achievable," and urged the Commission to grant a two-year blanket extension of time, until October 24, 2000, for carriers to comply with the CALEA standards.⁷ Although ICO supports an extension of the CALEA deadline, it faces issues unique to MSS providers that will prevent it from meeting even the two-year compliance date extension requested by other commenters.⁸ Therefore, ICO requests that the Commission find that MSS providers' compliance with yet to be

⁵ ICO stresses in this regard that any "industry" standard that includes MSS must address issues unique to the MSS industry.

⁶ As is discussed more fully below, if the FCC interprets CALEA to permit an ALI standard for CALEA, then it must recognize that MSS systems likely cannot comply with such a standard and must exempt them from compliance.

⁷ See e.g., Reply Comments of the American Civil Liberties Union, Electronic Privacy Information Center and Electronic Frontier Foundation at 1; Comment of the American Mobile Telecommunications Association Inc. at 8; Comments of the Personal Communications Industry Association at 3-4; Comments of 360° Communications Company at 7-8; Comments of the Telecommunications Industry Association at 9; Motorola Comments at 11; Comments of BellSouth Corporation at 18-19.

⁸ CALEA required the Attorney General to issue a final capacity requirements notice (*i.e.*, a notice specifying the maximum number of simultaneous call interceptions a carrier's system must be capable of supporting) by October 25, 1995. If issued on schedule, carriers then would have had three years to modify their systems to comply with CALEA. As of this date, more than three years after the passage of CALEA, the FBI has yet to issue a final capacity notice. Under Section 107(c) of CALEA, the Commission is authorized, after consultation with the Attorney General, to extend the compliance deadline for the technical capacity requirements of CALEA, if "compliance . . . is not reasonably achievable through application of technology available within the compliance period." 47 U.S.C. § 1006(c)(2). As commenters in this proceeding note, because of the FBI's failure to promulgate final technical capacity requirements, as well as its ongoing objections to industry proposed technical standards for CALEA, the industry was able to release only *interim* CALEA technical standards in December 1997. It likely will take more than a year for manufacturers to develop CALEA compliant equipment and make it available to carriers. Without such equipment, carriers cannot reasonably be expected to comply with CALEA.

determined CALEA capacity requirements and industry standards is not reasonably achievable at this time and exercise its authority under § 107(b)(5)⁹ to establish for MSS providers an additional two-year transition period beyond their initial IOC dates or the release of MSS technical and capacity standards, whichever is later, in which to comply with CALEA. For ICO, this extension produces a compliance deadline of year end 2002 at the earliest.

Although the FBI has committed to publishing a final notice of capacity requirements by early 1998, that notice is not expected to include capacity requirements for MSS providers.¹⁰ This means that ICO and other MSS providers cannot possibly determine at this time any modifications or additions that must be made to their satellite systems to ensure compliance with future CALEA requirements.¹¹ Even if MSS requirements were made available in the near future, ICO could not implement the necessary changes in the short term because ICO had to have its system design and implementation planning completed by 1997 in order to meet its current IOC date.

Moreover, because of the rigorous design and manufacturing schedules for implementing MSS systems, ICO also could not meet an October 2000 compliance date. As noted above, if it is to meet its IOC date, ICO's system contractor must contract for equipment, system components and system capabilities based upon 1997 availability. Because CALEA compliant MSS equipment may not be available for years, it is virtually

⁹ Section 107(b)(5) authorizes the Commission to provide carriers with "reasonable time and conditions for compliance with, and the transition to, any new standard, including defining the obligations of telecommunications carriers under Section 103 during any transition period." CALEA, § 107(b)(5).

¹⁰ See *Implementation of Section 104 of Communications Assistance for Law Enforcement Act*, Second Notice of Capacity, 62 Fed. Reg. 1902, 1904 (Jan. 14, 1997).

¹¹ The FBI has not committed to any date by which MSS capacity requirements will be available.

impossible for ICO to factor standards and requirements not presently available into the design of future ICO systems.

If the Commission exercises its discretion under Section 107(b)(5) to afford MSS providers a two-year extension for CALEA compliance beyond the later of their IOC date or the release of MSS technical and capacity requirements, whichever is later, ICO would comply to the extent reasonably possible at IOC with all authorized law enforcement interception requests.¹² Such compliance should be deemed by the Commission as full CALEA compliance during this interim period.¹³ ICO would take the earliest opportunity to upgrade its system architecture in its ground segment to incorporate CALEA specifications as published during the transition period.¹⁴

III. THE COMMISSION MUST INSURE THAT APPLICABLE INDUSTRY STANDARDS COMPLY WITH CALEA

Although the Commission may choose at this time not to address CALEA technical matters generally,¹⁵ it must address specific technical standards to the extent that they violate

¹² ICO stresses that its concern with respect to CALEA implementation is limited to the, as yet undefined, detailed technical requirements. ICO would support at IOC, to the extent reasonably practicable, lawful interception requests by authorized law enforcement officials.

¹³ See CALEA, § 107(b)(5).

¹⁴ The Commission should limit any MSS system modifications for CALEA purposes to ground segment modifications. The technical parameters and tolerances needed for satellite control and operations make modifications to any in-orbit aspect of a satellite system highly complex undertakings. Needed pre-launch design elements and post-launch software modifications often must be balanced against overall reliability and functionality concerns. In some cases, desired modifications, such as upgrades to meet CALEA standards, may be prohibitively costly or technically impossible. Therefore, the Commission should classify CALEA standards requiring in-orbit space segment modifications as not reasonably achievable under CALEA unless the space segment of a given MSS system is specifically designed to reasonably permit such modifications in the normal course of operations.

¹⁵ See CALEA NPRM at ¶ 44.

the provisions of CALEA, or create unreasonable burdens on certain classes of carriers.¹⁶ Of particular concern to ICO is any standard developed concerning the provision of location determination capabilities.¹⁷ ICO agrees with the Center for Democracy and Technology, *et. al.*, that such standards violate CALEA and should not be permitted.¹⁸

CALEA explicitly excludes ALI from the information that carriers are required to provide to law enforcement agents pursuant to a valid warrant. Section 103(d) of CALEA states that “call-identifying information *shall not include* any information that may disclose the *physical location of the subscriber* (except to the extent that the location may be determined from the telephone number).”¹⁹ Thus, CALEA forbids carriers from disclosing ALI and the Commission should require that any ALI standards be deleted from industry adopted CALEA compliance standards.²⁰

¹⁶ See generally, Comments of AirTouch Communications Inc. at 15-17; GTE Comments.

¹⁷ The FBI consistently has proposed that an ALI requirement be included in specifications established for industry compliance with CALEA. The interim CALEA technical standard includes a 125 meter accuracy ALI provision. See Comments of the Center For Democracy and Technology, The Electronic Frontier Foundation, and Computer Professionals For Social Responsibility at 5.

¹⁸ Under Section 107 of CALEA, a telecommunications carrier shall be found to be in compliance with the CALEA technical capability requirements if the carrier is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization. Thus, even an ALI requirement that may be voluntarily adopted despite language in CALEA to the contrary, arguably will affect whether ICO is deemed to be in compliance with CALEA, and therefore, this issue must be addressed by the Commission.

¹⁹ CALEA § 103(a)(2)(b) (emphasis added).


²⁰ To the extent that the FCC may interpret CALEA to permit the disclosure of ALI, ICO requests, for the same reasons as stated in footnote 14 *supra*, that the Commission exclude MSS providers from such disclosure requirements. Because of inherent physical limitations of MSS systems, MSS providers will be incapable of complying with high accuracy ALI requirements. Thus, such a requirement would impose an unreasonably burdensome regulatory mandate on the nascent MSS industry.

IV. CONCLUSION

Carriers subject to CALEA must be given a realistic opportunity to modify their systems to comply with defined CALEA standards and requirements and must not be required to comply with standards that they cannot reasonably meet. Therefore, ICO respectfully requests that the Commission establish for MSS providers an additional two-year transition period beyond their initial IOC dates or the release of MSS technical and capacity standards, whichever is later, in which to comply with CALEA. ICO also requests that the FCC find that ALI requirements are impermissible under the plain language of CALEA.

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CERTIFICATE OF SERVICE

I, Kathryn M. Stasko, do hereby certify that the foregoing **REPLY COMMENTS OF ICO SERVICES LIMITED** was hand delivered on this 11th day of February, 1998, to the following:

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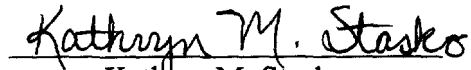
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